



SCOTT HAGGERTY, CHAIR  
Alameda County

ADRIENNE J. TISSIER, VICE CHAIR  
San Mateo County

TOM AZUMBRADO  
U.S. Department of Housing  
and Urban Development

TOM BATES  
Cities of Alameda County

DEAN J. CHU  
Cities of Santa Clara County

DAVE CORTESE  
Association of Bay Area Governments

CHRIS DALY  
City and County of San Francisco

BILL DODD  
Napa County and Cities

DORENE M. GIACOPINI  
U.S. Department of Transportation

FEDERAL D. GLOVER  
Contra Costa County

ANNE W. HALSTED  
San Francisco Bay Conservation  
and Development Commission

STEVE KINSEY  
Marin County and Cities

SUE LEMPERT  
Cities of San Mateo County

JAKE MACKENZIE  
Sonoma County and Cities

JON RUBIN  
San Francisco Mayor's Appointee

BIJAN SARTIPI  
State Business, Transportation  
and Housing Agency

JAMES P. SPERING  
Solano County and Cities

AMY REIN WORTH  
Cities of Contra Costa County

KEN YEAGER  
Santa Clara County

STEVE HEMINGER  
Executive Director

ANDREW B. FREMIER  
Deputy Executive Director

October 20, 2009

Addendum #2 to  
REQUEST FOR QUALIFICATIONS  
Public-Private Partnership Consultant and Legal Services Assistance  
Dated September 29, 2009

Dear Consultant/Law Firm:

This letter is Addendum No. 2 to the Request for Qualifications (RFQ) dated September 29, 2009, as revised in Addendum #1 dated October 12, 2009, inviting consultants and law firms to submit a Statement of Qualifications (SOQ) to provide consultant assistance and/or legal services to BATA in the evaluation of opportunities for public-private partnerships (P3) to assist in the development and implementation of transportation projects throughout the region.

Where text is revised, deleted text is shown in strike-through format; added text is *italicized*. The RFQ is revised as follows:

<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>
1	Introduction, Page 1, paragraph 1:	The Bay Area Toll Authority (BATA) invites your firm to submit a Statement of Qualifications (SOQ) to provide consultant assistance and/or legal services to BATA <i>and/or the Metropolitan Transportation Commission (MTC)</i> in the evaluation of opportunities for public-private partnerships (P3) to assist in the development and implementation of transportation projects throughout the region. BATA <i>and/or MTC</i> intends to contract with one or more selected consultants and/or law firms to provide consultant assistance or legal services on an as-needed basis. BATA <i>and/or MTC</i> may also utilize the services of selected consultants for general support of project implementation.
2	<b>Potential Scope of Services (page 2); Scope of Work and Budget, page 3</b>	All references to BATA shall be read to include the Metropolitan Transportation Commission in the alternative.

JOSEPH P. BORT METROCENTER | 101 EIGHTH STREET | OAKLAND, CA 94607-4700

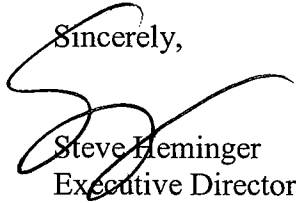
TEL 510.817.5700 | TTY/TDD 510.817.5769 | FAX 510.817.5848 | E-MAIL [info@mtc.ca.gov](mailto:info@mtc.ca.gov) | WEB [www.mtc.ca.gov](http://www.mtc.ca.gov)

<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>												
3	<b>Form of Statement of Qualification,</b> page 4, Item 7:	7. <u>Fully loaded</u> hourly rates for all proposed project personnel. Rates shall include all direct and indirect costs and profit. Field and home-office rates shall be provided for all proposed staff. Firms should also provide a complete description of additional expenses, <i>including travel, meals and lodging</i> , <del>provided however that BATA will not pay for ordinary travel expenses, meals or lodging, or permit add-on fees for use of subcontractors.</del> <i>BATA will reimburse the selected consultant for expenses deemed reasonable and necessary by BATA incurred by CONSULTANT in the performance of this Agreement.</i> Rates indicated shall be firm for the first two years of any contract term.												
4	<b>Evaluation Factors,</b> Bullet 7, page 4	<ul style="list-style-type: none"><li>Hourly rates of key personnel, <i>estimated expenses</i>, and cost effectiveness of management plan (for teams)</li></ul>												
5	<b>Consultant Selection Timetable,</b> page 5	<table><tr><td>4:00 p.m., October 16, 2009</td><td>Closing date and time for requests for clarifications/ exceptions</td></tr><tr><td>No later than three (3) business days prior to the date SOQs are due</td><td>Closing date and time for objections to RFQ provisions</td></tr><tr><td>4:00 p.m., October 28, 2009</td><td>Closing date and time for receipt of Statements of Qualifications</td></tr><tr><td><i>Week of November 16, 2009</i></td><td><i>Oral interview of law firms or teams</i></td></tr><tr><td>November 19 , 2009</td><td>Oral interviews, if necessary</td></tr><tr><td>December 9, 2009</td><td>BATA Oversight Committee approval of panel of consultants; or recommendation of award.</td></tr></table>	4:00 p.m., October 16, 2009	Closing date and time for requests for clarifications/ exceptions	No later than three (3) business days prior to the date SOQs are due	Closing date and time for objections to RFQ provisions	4:00 p.m., October 28, 2009	Closing date and time for receipt of Statements of Qualifications	<i>Week of November 16, 2009</i>	<i>Oral interview of law firms or teams</i>	November 19 , 2009	Oral interviews, if necessary	December 9, 2009	BATA Oversight Committee approval of panel of consultants; or recommendation of award.
4:00 p.m., October 16, 2009	Closing date and time for requests for clarifications/ exceptions													
No later than three (3) business days prior to the date SOQs are due	Closing date and time for objections to RFQ provisions													
4:00 p.m., October 28, 2009	Closing date and time for receipt of Statements of Qualifications													
<i>Week of November 16, 2009</i>	<i>Oral interview of law firms or teams</i>													
November 19 , 2009	Oral interviews, if necessary													
December 9, 2009	BATA Oversight Committee approval of panel of consultants; or recommendation of award.													
6	<b><u>General Conditions,</u></b> Paragraphs 4 & 5, page 6	A synopsis of BATA’s <i>and MTC’s</i> contract provisions is enclosed for your reference as <i>Appendix C</i> . <i>A copy of the complete standard contract may be request from the Project Manager.</i> If a consultant wishes to propose a change to any												

Addendum Item	Reference	Change(s)
6 (cont.)		<p>standard BATA/<i>MTC</i> contract provision, the provision and the proposed alternative language must be submitted by the deadline specified above for requests for exception. If no such change is requested, the consultant will be deemed to accept BATA’s/<i>MTC</i>’s standard contract provisions based on its submission of an SOQ.</p> <p>The selected consultants will be required to maintain insurance coverage, during the term of the contract, at the levels described in <i>Appendix B</i>, which <del>may</del> includes professional liability insurance in the amount of \$5,000,000. <i>Consultant agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in Appendix B, Insurance Requirements within five (5) days of BATA’s notice to firm that it is the successful proposer. Each policy or policies shall include BATA, as additional insureds and an endorsement providing that such insurance is primary insurance and no insurance of BATA will be called on to contribute to a loss.</i> Requests to change BATA’s insurance requirements must be brought to BATA’s attention no later than the date for requesting exceptions to RFQ provisions. If such objections are not brought to BATA’s attention by that deadline, compliance with the insurance requirements will be assumed.</p>
7	Appendix B, <u>Insurance Requirements</u> , page 9	Appendix B, <u>Insurance Requirements</u> , is deleted in its entirety and replaced with the attached Appendix B, Insurance Requirements.
8	Appendix C, <u>Synopsis of Provisions in BATA’s Standard Consultant Agreement</u> , page 10	Appendix C, <u>Synopsis of Provisions in BATA’s Standard Consultant Agreement</u> , is deleted in its entirety and replaced with the attached Appendix C, <u>Synopsis of Provisions in Agency’s Standard Consultant Agreement</u> .
9	Addendum No. 1, dated October 12, 2009, <u>Restriction on Participation in P3 Implementation</u> , page 1	The purpose of the RFQ is to obtain consultant and legal assistance in the evaluation of P3 transportation project opportunities. Firms selected to perform work under the RFQ who have been placed under contract with BATA <i>and/or MTC</i> are not eligible for consideration as contractors or subcontractors for any P3 transportation projects implemented by BATA <i>and/or MTC</i> . Firms who have been placed on a panel of pre-qualified firms, but who have not entered into a contract with BATA <i>and/or MTC</i> , may withdraw from the panel, and this restriction will not apply.

The remaining provisions of the RFQ, dated September 29, 2009, as revised by Addendum #1 on October 12, 2009, remain unchanged. In the event of a conflict between this addendum and the original RFQ, this addendum shall take precedence.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Heminger', is written over the printed name and title.

Steve Heminger  
Executive Director

SH: MJM:CC

J:\CONTRACT\Procurements\Planning&Analysis\RFQs\PPP Public-Private Partnership RFQ Add2.doc

## APPENDIX B

### INSURANCE REQUIREMENTS

Minimum Insurance Coverages. CONSULTANT shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best's rating of A-X or better. *The following requirements apply to contracts with MTC under this RFQ, as well. BATA and MTC are referenced collectively as "Agency."*

Yes (✓)	<b>Please certify by checking the boxes below left that required coverages will be provided within five (5) days of MTC-BATA's notice to firm that it is the successful proposer has been awarded a contract.</b>
_____	<u>Workers' Compensation Insurance</u> in the amount required by the applicable laws, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of MTC-Agency. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor with no employees.
_____	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnitee's defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form.  MTC-Agency, and its commissioners, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.
_____	<u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence.
_____	<u>Umbrella Insurance</u> in the amount of \$15,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.
_____	<u>Errors and Omissions Professional Liability Insurance</u> in an amount no less than \$5,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, CONSULTANT agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3) years beyond the termination or completion of services or until expiration of any

	<i>applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between the CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the responsibility for providing this Errors &amp; Omissions or Professional Liability coverage for all work performed by the CONSULTANT and any subcontractor/consultant working on behalf of the CONSULTANT on the project.</i>
_____	<u>Property Insurance</u> covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of <del>MTC</del> Agency (if any), debris removal, and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" ("All Risk") that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of <del>MTC</del> Agency. If such insurance coverage has a deductible, the CONSULTANT shall also be liable for the deductible.

**By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of ~~MTC~~Agency's notice to firm that it is the successful proposer has been awarded a contract..**

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

**NOTE: If you were unable to check "Yes" for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to ~~BATA~~Agency's attention no later than the date for protesting RFQ provisions. If such objections are not brought to ~~BATA~~Agency's attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.**

## APPENDIX C

### SYNOPSIS OF PROVISIONS IN AGENCY'S STANDARD CONSULTANT AGREEMENT

The selected consultant will be required to sign Agency's standard consultant agreement, a copy of which standard agreement may be obtained from the Project Manager for this RFQ. In order to provide bidders with an understanding of some of Agency's standard contract provisions, the following is a synopsis of the major requirements in our standard agreement for professional services. **THE ACTUAL LANGUAGE OF THE STANDARD CONSULTANT AGREEMENT SUPERSEDES THIS SYNOPSIS.** *"Agency" refers either to BATA or MTC.*

Termination: ~~BATA~~ Agency may, at any time, terminate the Agreement upon written notice to Consultant. Upon termination, ~~BATA~~ Agency will reimburse the Consultant for its costs for incomplete deliverables up to the date of termination. Upon payment, ~~BATA~~ Agency will be under no further obligation to the Consultant. If the Consultant fails to perform as specified in the agreement, ~~BATA~~ Agency may terminate the agreement for default by written notice following a period of cure, and the Consultant is then entitled only to compensation for costs incurred for work products acceptable to ~~BATA~~ Agency, less the costs to ~~BATA~~ Agency of rebidding.

Insurance Requirement: See *Appendix B, Insurance Requirements*, attached hereto.

Independent Contractor: Consultant is an independent contractor and has no authority to contract or enter into any other agreement in the name of ~~BATA~~ Agency. Consultant shall be fully responsible for all matters relating to payment of its employees including compliance with taxes.

Indemnification: Consultant agrees to defend, indemnify and hold ~~BATA~~ Agency harmless from all claims, damages, liability, and expenses resulting from any negligent or otherwise wrongful act or omission of Consultant in connection with the agreement. Consultant agrees to defend any and all claims, lawsuits or other legal proceedings brought against ~~BATA~~ Agency arising out of such negligent or wrongful acts or omissions. The Consultant shall pay the full cost of the defense and any resulting judgments. *Neither party shall be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs.*

Data Furnished by ~~BATA~~ Agency: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("~~BATA~~ Agency Data") made available to the Consultant by ~~BATA~~ Agency for use by the Consultant in the performance of its services under this Agreement shall remain the property of ~~BATA~~ Agency and shall be returned to ~~BATA~~ Agency at the completion or termination of this Agreement. No license to such ~~BATA~~ Agency Data, outside of the Scope of Work of the Project, is conferred or implied by the Consultant's use or possession of such ~~BATA~~ Agency Data. Any updates, revisions, additions or enhancements to such ~~BATA~~ Agency Data made by the Consultant in the context of the Project shall be the property of ~~BATA~~ Agency.

Ownership of Work Product: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("Work Product") written or produced by the Consultant under this Agreement and provided to BATA Agency as a deliverable shall be the property of BATA Agency. Consultant will be required to assign all rights in copyright to such Work Product to BATA Agency. *Consultant is authorized to maintain a copy of all data necessary to comply with its contractual obligations and applicable professional standards.*

Personnel and Level of Effort: Personnel assigned to this Project and the estimated number of hours to be supplied by each will be specified in an attachment to the Agreement. No substitution of personnel or substantial decrease of hours will be allowed without prior written approval of BATA Agency.

Subcontracts: No subcontracting of any or all of the services to be provided by Consultant shall be allowed without prior written approval of BATA Agency. BATA is under no obligation to any subcontractors.

Consultant's Records: Consultant shall keep complete and accurate books, records, accounts and any and all work products, materials, and other data relevant to its performance under this Agreement. All such records shall be available to BATA Agency for inspection and auditing purposes. The records shall be retained by Consultant for a period of not less than four (4) years following the fiscal year of the last expenditure under this Agreement.

Prohibited Interest: No member, officer or employee of BATA Agency can have any interest in this agreement or its proceeds and Consultant may not have any interest which conflicts with its performance under this Agreement.

Governing Law. The Agreement shall be governed by the laws of the State of California.